



**SCOTTSDALE BOARD OF ADJUSTMENT  
KIVA - CITY HALL  
3939 N. DRINKWATER BOULEVARD  
JUNE 4, 2003  
DRAFT MINUTES**

**PRESENT:** James Vail, Chair  
Terry Kuhstoss, Vice Chair  
Jennifer Goralski, Board Member  
Carol Perica, Board Member  
Norman Sands, Board Member  
Neal Waldman, Board Member  
Laurel Walsh, Board Member

**STAFF:** Janis Villalpando  
Kurt Jones  
Keith Niederer

**CALL TO ORDER**

The regular meeting of the Scottsdale Board of Adjustment was called to order by Chair Vail at 6:00 p.m.

**ROLL CALL**

A formal roll call confirmed members present as stated above.

**MINUTES APPROVAL**

May 7, 2003

**BOARD MEMBER WALSH MOVED FOR RESUBMISSION OF THE MINUTES TO THE PREPARER FOR CORRECTIONS IN SPELLING, SYNTAX, AND GRAMMAR. BOARD MEMBER SANDS SECONDED THE MOTION. THE MOTION PASSED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).**

## **REGULAR AGENDA**

**5-BA-2003 (Waxman / Morrison Property Variance)** Request for a ruling to determine if this new proposal constitutes a Material Change from prior case 12-BA-2002 (per Board of Adjustment Rules of Procedure, Section IV. Powers and Duties., 403. Resubmittals).

**MR. JONES** reviewed the chronology of the case, noting that the Board had denied the applicant's variance request on January 8, 2003. The applicant subsequently submitted an application to abandon excess right-of-way on the east side of 64<sup>th</sup> Street to the City of Phoenix. Phoenix City Council has not voted on the item to date. The applicant seeks a ruling on whether this would be considered a material change, once approved

**BOARD MEMBER WALSH** asked when the abandonment would be considered final and not subject to appeal, assuming approval by Phoenix City Council. Mr. Jones replied that the abandonment would be final once it was recorded in the offices of the Maricopa County Recorder.

**VICE CHAIR KUHSTOSS** inquired as to the status of the eight stipulations in the Administrator's decision. Mr. Jones referred to an E-mail received from the City of Phoenix Abandonment staff indicating that the stipulations had been addressed, and that they were simply awaiting City Council's approval.

*(Chair Vail opened public testimony)*

**MS. MORRISON AND MR. WAXMAN** presented their case to the Board. In reply to Vice Chair Kuhstoss' question, Ms. Morrison stated that she had spoken with Margaret Daniels at the City of Phoenix who assured her that City Council would meet on June 25 and July 2, and that their abandonment request would be part of a group process presented to Council, that it would be presented as a blanket vote, and that approval was automatic. Ms. Morrison went on to add that she had gone through all of the stipulations, and pointed out a waiver of the fee. She provided various letters of support for the abandonment from several City of Phoenix departments.

*(Chair Vail closed public testimony)*

**VICE CHAIR KUHSTOSS** stated that she felt there had been no material change at this point, as Phoenix City Council had not in fact approved the abandonment.

She added that she felt it was beyond the scope of the Board's authority to approve the variance request.

**BOARD MEMBER WALSH** recalled that in Study Session there was some discussion as to whether or not the applicant could bypass the request for a material change ruling, in the event the abandonment is approved and recorded. She noted that this would then enable the applicant to bring the issue to the Board with the new parameters.

**CHAIR VAIL** requested clarification from Ms. Villalpando.

**MS. VILLALPANDO** stated that the Board had three options:

1. Rule that the testimony presented tonight constitutes a material change, and grant a rehearing. The Board could then reconvene, hear the new facts, and approach the issue anew.
2. Rule that there has been no material change.
3. Grant a rehearing tonight subject to the condition that the applicants finalize the abandonment in the Maricopa County Recorder's Office.

**CHAIR VAIL** asked for Board Member discussion as to the options.

**BOARD MEMBER WALDMAN** stated that, should Phoenix grant the abandonment, it would indeed constitute a material change.

**BOARD MEMBER PERICA** concurred and spoke in favor of rehearing the case subsequent to approval by Phoenix and the appropriate recording process.

**BOARD MEMBER WALSH** stated that she considered this a material change once any chance of appeal has passed and the appropriate filings had been completed.

**CHAIR VAIL** commented that he felt confident, from all of the documentation presented, in considering this a material change now. He acknowledged the concern of other Board Members with not having written confirmation. He noted that he would support a motion as described in option three, considering this a material change and approving rehearing the issue upon filing with the Maricopa County Clerk's Office.

**VICE CHAIR KUHSTOSS** voiced her opinion that she would prefer to have a written opinion. She stated that, if there is an abandonment, she would consider it a material change, and the case would be eligible for a rehearing.

**BOARD MEMBER SANDS** spoke in favor of the third option, as stated by Ms. Villalpando.

**BOARD MEMBER GORALSKI** stated that there had been no material change to date. She cautioned the Board to be very careful due to uncertainty relative to the date of the Phoenix City Council hearing on this matter, and lack of knowledge about Maricopa County's time frame for recording.

**BOARD MEMBER WALSH** addressed Board Member Goralski's concerns, noting that all the Board was doing was agreeing to rehear the case after City Legal staff is fully satisfied that the abandonment has been finalized.

**BOARD MEMBER WALSH MOVED THAT THE BOARD OF ADJUSTMENT RECOGNIZE THAT AT SUCH TIME AS THE ABANDONMENT IS APPROVED BY THE CITY OF PHOENIX, AND THE TEN FEET OF ROADWAY IS PERFECTED, ALL FACTS AND CIRCUMSTANCE HAVE BEEN SATISFIED INCLUDING RECORDATION BY MARICOPA COUNTY, THAT THIS BOARD AUTHORIZE STAFF TO SCHEDULE A REHEARING WITH ALL THE PROPER PARAMETERS ATTENDANT TO POSTING THE AGENDA.** Vice Chair Kuhstoss asked if she could restate the motion. Board Member Walsh withdrew her motion.

**VICE CHAIR KUHSTOSS MOVED THAT OFFICIAL ABANDONMENT BY THE CITY OF PHOENIX OF THE TEN FEET OF PROPERTY UNDER DISCUSSION BE CONSIDERED A MATERIAL CHANGE, IF AND ONLY IF, IT DOES BECOME FINAL UNDER THE LAW OF THE STATE OF ARIZONA AND THE CITY OF PHOENIX, AND THAT THE BOARD DIRECTS STAFF, IN THE EVENT THIS DOES BECOME FINAL UNDER THE LAWS, TO SCHEDULE THE VARIANCE FOR THE NEXT AVAILABLE MEETING AFTER SUCH FINAL ACTION OCCURS. BOARD MEMBER WALDMAN SECONDED THE MOTION. THE MOTION PASSED UNANIMOUSLY BY A VOTE OF SEVEN (7) TO ZERO (0).**

## **ADJOURNMENT**

With no further business to discuss, the regular meeting of the Scottsdale Board of Adjustment was adjourned at 6:30 p.m.

Respectfully submitted,

"For the Record" Court Reporters